



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

March 7, 1974

**The Honorable Milton Y. Tate, Jr.
County Attorney
County of Washington
Brenham, Texas**

Open Records Decision No. 25

Dear Mr. Tate:

Your letter requests our determination of whether a radio station is entitled, under Article 6252-17a, Vernon's Texas Civil Statutes, The Open Records Act, to see the formal complaint papers filed against an individual with the Justice of the Peace.

The Open Records Act, supra, is made to apply to "All information collected, assembled, or maintained by governmental bodies." Sec. 3(a). Section 2, the definition of the Act, provides, in part:

"(1) 'Governmental body' means:

"(A) any board, commission, department, committee, institution, agency, or office within the executive or legislative branch of the state government. . . .

". . .

**"(C) the Judiciary is not included within this definition. "
(Emphasis added)**

Article 5, Sec. 1 of the Constitution of Texas provides:

**"The judicial power of the State shall be vested in
one Supreme Court. . . in Courts of Justices of the Peace,**

and in such other courts as may be provided by law."

We see no escape from the conclusion that a Justice of the Peace is a member of the Judiciary, and is not "within the executive or legislative branch of the state government." Therefore, The Open Records Act does not apply to the records maintained by a justice of the peace.

Since the Open Records Act by its express terms does not apply to the judiciary, that branch of government is in the same position in regard to information held by it as it always has been. The Open Records Act neither authorizes information held by the judiciary to be withheld nor requires it to be disclosed.

Article 45.16, Vernon's Texas Code of Criminal Procedure, requires a justice of the peace receiving a complaint to reduce it to writing, cause it to be signed, sworn, attested, and filed. Article 2383, Vernon's Texas Civil Statutes, requires a justice of the peace to "arrange and safely keep" all papers filed in his court and to keep such papers "subject at all reasonable times to the inspection of any interested party." We have no Texas law describing who is an "interested party" in the context of a criminal proceeding before a Justice of the Peace, and we are unable to say that the defendant is the only interested party. In 66 Am. Jur. 2d, Records, §12, p. 348, it is said:

" . . . In jurisdictions where the right to inspect public records extends only to those who show some special interest in them, such interest must generally be alleged and proved. But some jurisdictions hold that there is an absolute right to inspect a public document in the absence of specifically stated sufficient reasons to the contrary. Another approach is that the common-law right to inspect public records is not absolute, but is to be determined by whether permitting inspection would result in harm to the public interest which outweighs the benefit; but that public policy favors the right of inspection of public records and documents and it is only in the exceptional case that inspection should be denied. . . ."

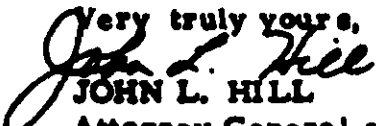
Article 1.27, V. T. C. C. P., provides, "If this Code fails to provide a rule of procedure in any particular state of case which may arise, the rules of the common law shall be applied and govern."

A citizen has a common law right to inspect county finance records to discover a misapplication of funds. Palacios v. Corbett, 172 S. W. 777 (Tex. Civ. App., San Antonio, 1915, err. ref'd.) In that case, the court noted that the common law right of inspection may extend even to cases where no special or private interest is shown by the citizen, where it is important to the public interest for a general examination of public books and records to be had.

In Jenkins v. State, 75 S. W. 312 (Tex. Crim. 1903), the Court said:

"Appellant made a motion to require the state to turn over to appellant or his counsel certain proceedings had before the justice of the peace and Judge Wallace, which occurred shortly after the homicide. The motion and bill do not make it clear whether this was inquest testimony, or proceedings set on foot to discover the murderer under articles 941, 942, Code Cr. Proc. 1895. If these proceedings were authorized by law, and the testimony of the witnesses taken down, it was a public document, and appellant, on proper motion had a right to inspect and use it, if he deemed it necessary." (75 S. W. 2d 312)

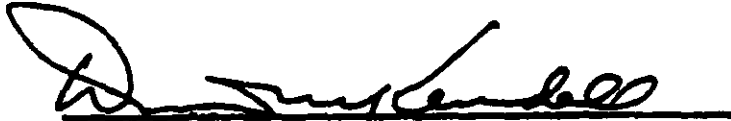
We, therefore, believe that Article 2383, V. T. C. S., which requires a justice of the peace to keep papers filed in his court subject at all reasonable times to the inspection of an interested party, must be read in light of the common law right of inspection of public records. In the absence of some law authorizing the withholding of records filed in his court, or a showing that permitting inspection would result in harm to the public interest, the justice of the peace should make them available for inspection by the public at reasonable times.

Very truly yours,

JOHN L. HILL
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APPROVED:



C. J. CARL, Staff Legislative Assistant



DAVID M. KENDALL, Chairman
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